

1 is not correct.

2 A The sentence that says, I stated clearly that we  
3 would consider written proposals only is not correct.

4 Q Now, what did you do in response to this letter that  
5 you received on 14 November, 1991?

6 A I tried to call him.

7 Q And were you successful in reaching him?

8 A No, I was not successful in reaching him.

9 Q And what else did you do?

10 A I put a letter together, faxed it and sent it first  
11 class mail.

12 Q And is that the letter that appears at Tab A,  
13 page 11?

14 A I don't have it as page 11, I have it as 7 -- I'm  
15 sorry, this is the -- the letter is dated November 19 of 1991.

16 Q Yeah, I think we both have the same thing.

17 A Okay, right.

18 Q And yours is at page --

19 A 7

20 MR. DUNNE: Could we go off the record for a moment,  
21 Your Honor.

22 JUDGE FRYSIK: What?

23 MR. DUNNE: Could we go off the record for a moment?

24 JUDGE FRYSIK: Okay.

25 (Off the record.)

1 (On the record.)

2 JUDGE FRYSIK: Go ahead, we're on the record.

3 (Off the record.)

4 (On the record.)

5 MR. ZAUNER: In an off-the-record discussion, we  
6 determined that the witness is looking at the same document as  
7 is counsel which is page 11 of counsel's --

8 JUDGE FRYSIK: Which is the letter dated  
9 November 18, 1991?

10 MR. ZAUNER: Right, the letter --

11 JUDGE FRYSIK: Signed by Mr. Alexander McEwing..

12 MR. ZAUNER: Yes.

13 BY MR. ZAUNER:

14 Q Okay, in writing this letter, you did not point out  
15 the false statement in Mr. Westbrook's letter to yourself of  
16 14 November, 1991, is that correct?

17 A That's correct.

18 Q Is there any reason why you didn't?

19 A At that point in time, I was trying to relate to him  
20 the way that the conversation went. In writing a letter back  
21 to him, I didn't want to be adversarial about the inaccuracies  
22 that he had made in his letter to me.

23 Q Okay.

24 MR. ZAUNER: May I have one moment, Your Honor.

25 JUDGE FRYSIK: Sure.

1 MR. ZAUNER: Can we go off the record, I think this  
2 is off-the-record.

3 (End of Tape 1. Start of Tape 2.)

4 MR. ZAUNER: Your Honor, I have no further  
5 questions.

6 JUDGE FRYSIK: All right, is there any redirect?

7 MR. DUNNE: I have a few on redirect, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. DUNNE:

10 Q Just for the record, Mr. McEwing, when you -- during  
11 your testimony you referred to several times to a repeater for  
12 WGLY-FM, does repeater, in your mind, mean the same thing as  
13 your application for Hague, New York?

14 A Yes.

15 Q Okay, I'd like to refer you, if I may, to your  
16 testimony, Tab A, page 7, are these a copy of your telephone  
17 records from September of 1991?

18 A Yes, it is.

19 Q Okay, I'd like, if I may, it's page 7 -- I'd like if  
20 I may, if I could direct your attention to the last three  
21 telephone calls at the bottom of the page, those are all on  
22 September 18th, are they not?

23 A That's correct.

24 Q Okay, the first call is noted as 11/19 to Albany,  
25 New York.

1 A Yes.

2 Q And do you remember who is at that telephone number?

3 A I believe that's the phone number for WAMC,

4 Mr. David Gallety.

5 Q Okay.

6 MR. ZAUNER: Excuse me, could you tell me what page  
7 you're on?

8 MR. DUNNE: Exhibit No. 1, Tab A, page 7, bottom of  
9 the page.

10 MR. ZAUNER: I can't read anything on the bottom of  
11 -- I can now just make out Albany, okay.

12 MR. DUNNE: Okay, I apologize, Your Honor, some of  
13 these copies are not as good and that's why we're going  
14 through this exercise.

15 BY MR. DUNNE:

16 Q The next line down which is underlined on everyone's  
17 copy, what's the date of that telephone call?

18 A September 18th.

19 Q And the time?

20 A 11:25.

21 Q And the telephone number, who was that telephone  
22 call made to?

23 A That's the phone call and the number for Fort  
24 Ticonderoga for Mr. Westbrook.

25 Q Okay, so this telephone call occurred immediately

1 after your call to Mr. Gallety.

2 A That's correct.

3 Q Okay, and the last telephone call at the bottom of  
4 the page, what date was that telephone call made?

5 A September 18th.

6 Q At what time was it made?

7 A 11:47, I believe.

8 Q And to whom was it made, if you recall?

9 A That's Gary Savoie's number.

10 Q Okay, and this last telephone call was a call you  
11 referred to in your testimony in which you discussed your  
12 conversation with Mr. Westbrook.

13 A That's correct.

14 MR. ZAUNER: Just for my information, to what  
15 community -- what was the destination of that last call, I  
16 can't read it on my copy?

17 JUDGE FRYSIK: Claremont?

18 MR. DUNNE: Claremont.

19 MR. MCEWING: Claremont, New Hampshire, yes.

20 MR. ZAUNER: Okay.

21 BY MR. DUNNE:

22 Q Okay, Mr. McEwing, if I could, could I refer you to  
23 your testimony, Tab A, the last page of your verified  
24 statement which is page 3 of Tab A.

25 A Yes.

1           Q     Okay, if I could direct your attention to that first  
2 -- the second full sentence where it says, Hague/Ticonderoga  
3 is a small community, people know one another there. Do you  
4 see that sentence, Hague/Ticonderoga is a small community,  
5 people know --

6           A     Yes, yes.

7           Q     How do you know that?

8           A     I've been over there.

9           MR. ZAUNER: I'm going to object, Your Honor, this  
10 goes beyond the scope of the cross-examination.

11           JUDGE FRYSIK: Well, let him ask the question  
12 first, what's the -- well, state the -- give me your offer of  
13 proof?

14           MR. DUNNE: Your Honor, if -- I believe, if asked to  
15 answer the question, I can -- Mr. McEwing will testify that he  
16 knows several people in the Fort Ticonderoga area that he's  
17 quite close to and it shows that he has a contact with that  
18 area and therefore he has a reason not to be known as someone  
19 who doesn't tell the truth in the area either.

20           JUDGE FRYSIK: All right, I'll sustain the  
21 objection. You've covered it with other affidavits.

22           MR. DUNNE: Okay, Your Honor, I have no further  
23 questions then.

24           JUDGE FRYSIK: All right, any re-cross?

25           MR. ZAUNER: No, Your Honor.

1 JUDGE FRYSIAK: Okay, Mr. McEwing, you're excused,  
2 thank you very much.

3 MR. MCEWING: Thank you.

4 MR. DUNNE: I'll go and get Mr. Morton.

5 JUDGE FRYSIAK: All right.

6 (Off the record.)

7 (On the record.)

8 JUDGE FRYSIAK: Before you take your seat, please,  
9 let me take your oath. Raise your right hand, do you swear  
10 that the testimony you are about to give will be the truth and  
11 nothing but the truth?

12 MR. MORTON: I do.

13 JUDGE FRYSIAK: Have a seat, and for the record,  
14 state your full name and address.

15 MR. MORTON: My name is Peter Morton, I live in  
16 Rupert, Vermont.

17 JUDGE FRYSIAK: All right, the witness is available  
18 for cross-examination, Mr. Zauner.

19 MR. ZAUNER: Thank you, Your Honor.

20 (Whereupon,

21 PETER MORTON,  
22 was called as a witness and after being duly sworn was  
23 examined and testified as follows:)

24 CROSS-EXAMINATION

25 BY MR. ZAUNER:

1 Q Good morning, sir.

2 A Good morning.

3 Q In your written testimony you indicate that you have  
4 a part ownership of WMNV-FM in Rupert, Vermont, is that  
5 correct?

6 A Not -- no, not at the moment. When it was  
7 originally put on the air I owned part of it, it was  
8 subsequently sold to Family Broadcasting.

9 Q Okay, and the group that you were part of sold this  
10 station, this FM station to Family Broadcasting.

11 A Right, right.

12 Q And you have no financial interest in it at this  
13 point.

14 A None at all.

15 Q Do you own any stock in Family Broadcasting?

16 A No, I do not.

17 Q Do you own any stock in a company with the name  
18 Harvest as part of it?

19 A No, I do not.

20 Q You indicate that during the summer of 1991 you  
21 worked as the manger WIPS, an AM station serving Ticonderoga,  
22 New York, when did you begin employment with WIPS?

23 A Actually, it was earlier than that, it was  
24 approximately April of that year.

25 Q April of 1991.

1 A Right.

2 Q And how long did you serve as the manager of WIPS?

3 A Approximately 10 months, I left at the end of the  
4 year.

5 Q Did you leave in early 1992?

6 A I think so.

7 Q From April until the time you left in 1992, did you  
8 hold the same position, manager?

9 A Yes.

10 Q When you left in 1992, did you continue to reside in  
11 the Fort Ticonderoga area or did you leave?

12 A I did not reside ever in Ticonderoga, I drove there  
13 every day to work and returned to my home in Rupert.

14 Q Do you continue to live in Rupert?

15 A Yes.

16 Q During your employment with WIPS, did you become  
17 acquainted with a Mr. Nicholas Westbrook?

18 A Yes, I did.

19 Q And how did that come about?

20 A The tower site for the AM radio station was located  
21 on property owned by the Fort that Mr. Westbrook managed.

22 Q Was this owned -- was this the tower on Mt. Defiance  
23 or was it another tower?

24 A This was another tower.

25 Q And where was that other tower located?

1           A     It was located adjacent to the Fort at the edge of  
2 -- it's Lake Champlain.

3           Q     Did Mr. Westbrook manage both sites, the Mt.  
4 Defiance and the Mt. -- and the Lake Champlain site?

5           A     Yes, he did.

6           Q     About how far from the Mt. Defiance tower is the  
7 Lake Champlain tower?

8           A     Approximately a mile and a half.

9           Q     As manager of WIPS, what were your responsibilities?

10          A     To keep the station running, to report to the owners  
11 what was going on, to sell advertising, to manage the  
12 day-to-day affairs of the station, making sure programs got  
13 on, announcers were there on time.

14          Q     How big a staff did WIPS have?

15          A     There were four including myself, possibly two  
16 part-timers.

17          Q     While you were there, was WIPS having financial  
18 difficulties?

19          A     Yes, it was.

20          Q     Was WIPS behind on its rent to the Fort Ticonderoga  
21 Association for its lease of space on the tower by Lake  
22 Champlain?

23          A     Yes.

24          Q     Was it behind on other debts?

25          A     Yes.

1 Q Were you interested in acquiring WIPS?

2 A I had had conversations with the owners pursuing  
3 that.

4 Q Have you ever met directly with Mr. Westbrook?

5 A Yes, I did.

6 Q On how many occasions have you met him in person?

7 A One time.

8 Q When was that, do you recall?

9 A It was shortly after I came to work as the manager  
10 of the station, I'd say maybe the end of April, several weeks  
11 after I had gotten -- once I had gotten established, that was  
12 one of the things I needed to do.

13 Q What was your purpose in going to meet with  
14 Mr. Westbrook?

15 A I knew of the FM allocation for Hague and in order  
16 to feel like it was a good idea to purchase the AM station, I  
17 needed to have some feeling I would also be able to have the  
18 FM also, to put the two of them together in a package  
19 otherwise the AM station had no chance of continuing in  
20 existence.

21 Q Your thought then was to operate a combined AM-FM  
22 operation?

23 A Correct, right, the station had been that before and  
24 had sold the FM off. I -- WANC was the former FM of WIPS.

25 Q Do you recall when you went to see Mr. Westbrook?

1           A     What are you asking, time of day?

2           Q     What -- well, was it in the summer of 1991?

3           MR. DUNNE: I believe he answered April, it would

4 have been April.

5           MR. MORTON: It would have been earlier.

6           BY MR. ZAUNER:

7           Q     It was earlier than that?

8           A     Yeah.

9           Q     Okay, well, why was it that you -- did -- let me

10 withdraw that. Did you call Mr. Westbrook and ask for a

11 meeting?

12          A     Yes.

13          Q     And did he agree to a meeting?

14          A     Yes.

15          Q     Did you tell him why you wanted to meet with him

16 at --

17          A     In the telephone conversation?

18          Q     Yes.

19          A     No, I said I'm the new manager, I'm -- there were a

20 number of things we needed to talk about, I said, I need to

21 get together with you. He said, fine, come on over.

22          Q     And you did so and you met with Mr. Westbrook.

23          A     Correct.

24          Q     Again, what was your purpose of meeting with

25 Mr. Westbrook?

1           A     Actually there were a number of things I needed to  
2 discuss with him. One was part of the lease arrangement for  
3 the property involved and advertising trade where we did  
4 promotional announcements for the Fort, the copy was overdue  
5 for that, I needed to talk to him about that. As a potential  
6 purchaser for WIPS, I was interested in what his figure for  
7 the behind rent was, at any kind of a closing you have to come  
8 up with a check. The sellers had given me a figure, I was not  
9 sure it was accurate, I needed to talk to him about that and  
10 also I needed to talk to him about the FM and ascertain  
11 whether the site at Mt. Defiance would also be available for  
12 another transmitter.

13          Q     When you spoke with Mr. Westbrook, did you tell him  
14 of your interest in acquiring WIPS-AM?

15          A     Yes, I did.

16          Q     Did you tell him that you were looking for investors  
17 at that time?

18          A     I told him that I was having some preliminary  
19 conversation with a local industrial investment association,  
20 they had some money and they thought that was an area they  
21 might want to put it.

22          Q     Did you ask Mr. Westbrook whether the association  
23 would be willing to transfer WIPS's tower lease to new owners?

24          A     Yes, I did.

25          Q     And what was his response, do you recall?

1           A     That he would do that if it were the right person, I  
2 think he felt that there was some possibility he would be able  
3 to negotiate a better arrangement for himself at the time of  
4 the transfer.

5           Q     Did you discuss a potential rental fee that you and  
6 your group would be willing to pay?

7           A     I discussed what the arrangement he had currently  
8 was which was a percentage of gross and he said he would want  
9 a higher percentage under a new arrangement because the  
10 station was performing poorly, he wasn't getting what he felt  
11 was adequate rent for the station. If at some time in the  
12 future the station were to perform higher, he would be willing  
13 to discuss some sort of a cap.

14          Q     Now, you indicate that you also talked to him about  
15 the FM.

16          A     That's correct.

17          Q     What did you say to him concerning the FM?

18          A     I told him that the Commission was in the process of  
19 having a rulemaking procedure that an FM could possibly be  
20 granted to Hague but the ideal location for it would be on the  
21 Mt. Defiance site where it would cover not only Hague but  
22 Ticonderoga and a number of other small communities and it  
23 would -- it was a necessary part of my plans, without that I  
24 wouldn't be able to purchase the AM station but it was all  
25 tentative until the Commission made that actual assignment.

1 Q Did you ask him for permission to locate the new FM  
2 antenna on the Association's Mt. Defiance site?

3 A Yes.

4 Q And what did he respond?

5 A He asked -- the first thing he asked was the  
6 programming, his request was, you're not going to play the  
7 format that the other station had had before.

8 Q Meaning WIPS.

9 A WIPS is FM, WXTY had a -- like a college radio type  
10 format, it was not well received in the local community.

11 Q So the first question concerned the programming that  
12 you were going to present.

13 A Concerned the programming, we discussed the -- some  
14 potential music formats, I did not get into any exact ones.  
15 We talked about local news, I explained my philosophy of  
16 wanting to be involved in the local community and do local  
17 news, you know, make the station that sort of a thing and he  
18 seemed to respond to that.

19 Q Did he discuss his concern that if WIPS went off the  
20 air that there would be a loss of local service to the  
21 community?

22 A Yes, he suggested therefore it was quite solicitous  
23 to having the station in the community and although they had  
24 not received much money and there had been problems with the  
25 current owners that they had not all they could in a legal way

1 to do things with them because they felt that it -- if the  
2 station continued it would help the community.

3 Q Did he tell you that he was -- that in a joking  
4 fashion that if the station went off the air that the kids  
5 would not know which days were snow days that they didn't have  
6 to go to school?

7 A It's possible, I don't remember that particular  
8 comment, but, yeah, we had some light conversation about what  
9 the station did and we talked about some of the pros and cons  
10 of what it was doing.

11 Q Did you talk to him about your background in  
12 broadcasting?

13 A We talked about it a little bit, I don't think I  
14 gave him too much information.

15 Q Did you tell him that you'd been involved in  
16 providing community type programming in the past?

17 A I think so.

18 Q And after you spoke about the programming, what did  
19 he say to you, what was the -- you said the first item was  
20 programming, now what was -- was there a second?

21 A Then he raised issues about the nature of the Fort,  
22 he asked how large a transmitter there would be, how much room  
23 it would take up in the building and he was specifically  
24 interested in what size and shape antenna would have to go on  
25 the tower. The site is a historic site, it does have -- you

1 know, they have to be careful not to make it look like a  
2 developed area and he wanted to make sure that we wouldn't be  
3 adding some large unsightly antenna to what was there.

4 Q And just so the record is clear and make sure my  
5 understanding is clear, we're now talking about the  
6 Mt. Defiance site as opposed to the Mt. --

7 A Mt. Defiance, that's correct.

8 Q -- opposed to the Lake Champlain site they also own.

9 A Right.

10 Q Okay, and now, was there a third thing that he  
11 raised, you said he was concerned about the programming and  
12 the -- preserving the nature of the Fort --

13 A Then we talked about the money.

14 Q And you talked about the money, and what did he talk  
15 about?

16 A And his comment was, a site of that nature is more  
17 valuable than what you're getting for WIPS. He would not be  
18 willing to take a percentage of gross just for that, he would  
19 want a set figure plus a percentage of gross.

20 Q And what he was telling you is that if he provided  
21 you an FM site then he felt that that site was more valuable?

22 A That's correct.

23 Q Was there anything else that you discussed, we now  
24 have programming, preserving the nature of the fort and the  
25 cost of rental?

1       A     No, I don't think so, it was -- the whole attitude  
2 of the conversation was how should we go about this and these  
3 are the problems I see, what do you think about it.

4       Q     Did he suggest at any point that you should submit a  
5 written proposal?

6       A     Not at that time.

7       Q     Did he ask you to provide him with a letter?

8       A     No, we had -- I don't know whether it's germane or  
9 not, but at that point we -- the rest of the time I had there  
10 we talked about Empire State Broadcasting and his former --  
11 all the contacts he'd had with them.

12      Q     And did you subsequently have any conversations with  
13 Mr. Westbrook?

14      A     Yes, several times after that.

15      Q     And with regard to your use of the Mt. Defiance  
16 site, did you have any conversations with Mr. Westbrook?

17      A     Yes.

18      Q     How many conversations did you have?

19      A     One time.

20      Q     And when was that?

21      A     I'm thinking it probably was mid or end of July, it  
22 was after the Commission had assigned the channel and the  
23 30-day waiting period had gone by so it was an open window at  
24 that point and I called him to say, one, what I told you was  
25 going to happen happened and I'm wanting to go a little

1 further with this, you know, just kind of to let him know what  
2 was happening.

3 Q Did you ask him at that time for permission to use  
4 the Mt. Defiance site for an application?

5 A Yes.

6 Q And what did he tell you?

7 A He at first said, isn't there some way that we could  
8 use the AM tower, wouldn't that be more convenient for you and  
9 the AM tower's outside the area to locate.

10 Q And what did you reply?

11 A I told him that it was not usable because of that  
12 reason.

13 Q And what did he say to that, anything?

14 A He said, well, if you have to use the FM, that's  
15 what we'll have to do, if -- the Mt. Defiance site.

16 Q Did you interpret what he said as giving you  
17 permission to specify his tower?

18 A Yes, I did.

19 Q Did he ask you at that time to submit a written  
20 proposal?

21 A Yes.

22 Q What was the purpose of the written proposal, did he  
23 tell you?

24 A There apparently was a Board of Directors, they had  
25 some control over what was done there in terms of the visual

1 impact on the site, he had to satisfy them that the proposed  
2 construction would not damage the looks of the Fort.

3 Q Did he indicate to you that it was necessary to  
4 submit your proposal to the other tenants of the tower to make  
5 sure that your proposal was compatible with the current uses  
6 of the tower?

7 A No, he did not

8 Q Coming back to your first -- to your in-person  
9 meeting with Mr. Westbrook, would it be fair to say that you  
10 were making a hypothetical proposal to him with concern to the  
11 FM station?

12 A Yes, I suggested that it was tentative and it  
13 depended upon what the FCC did and I was in the process of  
14 sounding him out to see what type of a landlord he would be.

15 Q And after you called him and obtained what you  
16 testify you believe to be reasonable assurance, did you, in  
17 fact, file an application for the FM?

18 A No, I did not.

19 Q And why didn't you?

20 A The primary reason was my inability to come to any  
21 satisfactory conclusion with Empire State Broadcasting  
22 considering the sale of WIPS. Paper work that supposed to be  
23 submitted never got submitted, amounts of money they  
24 supposedly owed that would have to be paid at the closing,  
25 they gave me figures that were incorrect. The whole

1 negotiating process fell apart and I didn't feel confident to  
2 proceed with the FM until I knew what would happen there.

3 Q You state in your testimony concerning your  
4 telephone call that we've been talking about with  
5 Mr. Westbrook --

6 A Um-hum.

7 Q -- that when it concluded you believed that you had  
8 had his -- you had his permission to specify the Ft. Defiance  
9 site as a transmitter site.

10 A Right.

11 Q What was it --

12 JUDGE FRYSIK: I didn't hear you answer him.

13 MR. MORTON: Yes, sir.

14 JUDGE FRYSIK: Yes.

15 BY MR. ZAUNER:

16 Q What was it in Mr. -- that Mr. Westbrook said that  
17 made you believe you had his permission to do so?

18 A I felt that he was on my side, he seemed to indicate  
19 that the paper work that had to go to the Board, he would  
20 facilitate that, he would -- we talked about the IDA and he  
21 said they're good people to work with, he used me as a  
22 reference. I -- you know, based on his representation to me,  
23 I then spent a fair number of hours talking to other people  
24 trying to move the process along and do the whole arrangement.

25 Q You indicate in your statement that you work as a

1 consultant.

2 A Um-hum.

3 Q What kind of consulting advise do you give, is it  
4 technical in nature?

5 A Technical.

6 Q As a technical consultant did you have any concern  
7 with the compatibility of the FM antenna with other tenants on  
8 the tower?

9 A No.

10 Q Were you familiar with the tower and its tenants,  
11 this is the Mt. Defiance tower we're talking about?

12 A Right, I was aware in a general nature of mobile and  
13 radio and safety radio that was there and I knew of WXT -- the  
14 former WXTY which was then WANC and their frequency, other  
15 things that might be there I was not aware of. At -- I had  
16 never personally been on the site.

17 Q Were you aware of whether there would be room on the  
18 tower for your antenna?

19 A The former engineer for WIPS and I had a  
20 conversation about the size of the building and the space on  
21 the tower and things of that nature, I -- from what I gathered  
22 from him there would be room.

23 MR. ZAUNER: I have no further questions.

24 JUDGE FRYSIK: And redirect?

25 MR. DUNNE: Yes, I do.

## REDIRECT EXAMINATION

BY MR. DUNNE:

Q Mr. Morton, I'd like to direct your attention, if I may, if you'd open up your exhibit, please, to page 2, paragraph 4, I'd like you to read that.

A When the FCC sub --

Q No, read it to yourself, please.

A Oh, I'm sorry -- um-hum.

Q Okay, now, Mr. Zauner asked you the question, is there anything during the second -- the telephone conversation that you had with Mr. Westbrook about using the Mt. Defiance site for the Hague FM application. Was there anything that he said to you that you thought gave you reasonable assurance to use the site.

A Well, if you're asking for exact wording, he said something in the nature of, we can do something or it can be worked out.

Q Okay, he said that to you during the second -- the telephone conversation you had with him.

A Yes.

Q Now, you're quite clear there was a personal meeting and a sec -- a telephone conversation that discussed the Mt. Defiance site as the site for the Hague FM application.

A Yes.

Q During the first meeting, did you leave the meeting

1 with the idea that you had reasonable assurance to use the  
2 site if you wanted to file an FM application?

3 A Yes, I felt that this -- that not only the site but  
4 other areas in their jurisdiction were available for rent and  
5 pending my agreement to his terms, that yes, the site would be  
6 available.

7 Q Okay, during the first meeting -- I shouldn't say  
8 first meeting, during the meeting with Mr. Westbrook, did he  
9 say anything to you that led you to believe that you would  
10 have reasonable assurance to file a Hague application if you  
11 wished?

12 A I -- yes.

13 Q And what did he say that gave you that impression?

14 A He said they wanted to keep the station in town and  
15 if that was what I needed to do they would cooperate with it.

16 MR. DUNNE: I have no further questions, Your Honor.

17 JUDGE FRYSIK: Any recross?

18 MR. ZAUNER: Yeah, just one.

19 RECROSS-EXAMINATION

20 BY MR. ZAUNER:

21 Q During this conversation with Mr. Brook --  
22 Mr. Westbrook, did he say anything about his having to clear  
23 your proposal with his Board of Trustees or his Board of  
24 Directors or with anyone else?

25 A Now which conversation are we talking about?

1           Q     This is the person-to-person conversation in his  
2 office.

3           A     The in-person conversation, a Board of Directors was  
4 never mentioned.

5           Q     A Board of Trustees ever mentioned?

6           A     No, none of that was ever mentioned at that time and  
7 he gave me every idea that he was the one that made decisions  
8 and that I was talking to the right person and that was that.

9           JUDGE FRYSIK: What about the second conversation?

10          MR. MORTON: At the end of the second conversation  
11 when he said, in essence, we can work it out, he said, I will  
12 need this letter to take to my Board and I will take it there  
13 personally and see that it --

14          JUDGE FRYSIK: Did he say that he had to clear it  
15 with the Board, clear the proposal with the Board, is that the  
16 term he used?

17          MR. MORTON: I don't believe so, just that I need a  
18 letter outlining a proposal to take to the Board.

19          BY MR. ZAUNER:

20          Q     Going back to the first conversation, isn't it a  
21 fact that you didn't receive any kind of reasonable assurance  
22 of anything at that conversation because there was nothing  
23 really before Mr. Westbrook or yourself and you were just  
24 speaking hypothetically?

25          A     It would not be possible to enter into an agreement